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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/771,557	02/03/2004	David Oliwa	6806P001	3739

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BLAKELY SOKOLOFF TAYLOR & ZAFMAN  
12400 WILSHIRE BOULEVARD  
SEVENTH FLOOR  
LOS ANGELES, CA 90025-1030

EXAMINER

CRAIG, PAULA L

ART UNIT PAPER NUMBER

3761

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/27/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/771,557

Applicant(s)

OLIWA, DAVID

Examiner

Paula L. Craig

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 December 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 4,6-8 and 12-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,6-8 and 12-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 February 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date. _____   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on December 13, 2006 has been entered.

### ***Response to Arguments***

2. Applicant's arguments filed December 13, 2006 have been fully considered but they are not persuasive. The indication of allowable subject matter for Claim 4 in the prior Office Action mailed July 11, 2006 is withdrawn. Applicant argues that there is insufficient motivation to combine Whiting and Hoover with Martin and Carroll. However, housings intended to resemble pagers, to disguise the contents as an innocuous item, are well known in the container art; see U.S. Patent Nos. 4,991,225 to Holcomb et al., 5,570,827 to Wiesner, 5,673,819 to Brunswig, 5,915,558 to Girvetz, 6,520,334 to Hoover, and 6,543,689 to Sabella. Pagers can be manufactured in a variety of different shapes to fulfill different user requirements; see WO 90/13951 to Fennell et al., which teaches that pagers can be manufactured in a variety of shapes, including the shape of a cigarette pack, a pen, or a credit card (page 1, lines 18-25).

Art Unit: 3761

Wireless devices and cable connections are well-known equivalents for remote control of devices. The reference Leg Bag Valve by Lakeshore Assistive Technology from <http://www.lakeshoretechonline.com>, previously of record, confirms that it is known in the art to use a cable to connect a remote control device to a valve for a urine collection bag. Using a clip to attach a urine collection device to a belt or waistband is also well known, as shown by U.S. Patent Nos. 5,346,483 to Thaxton, Sr. and 6,223,751 to Park.

### ***Drawings***

3. The objections to the drawings under 37 CFR 1.84 listed on Form PTO-948 included with the prior Office Action mailed October 18, 2005 are maintained for the reasons of record.

### ***Claim Rejections - 35 USC § 101***

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claims 6-7 and 13-14 are rejected under 35 U.S.C. 101 because a human body part is not patentable. It is suggested that "secured to an ankle of the person" should be replaced by "dimensioned and configured to be secured to an ankle of the person" to avoid claiming a human body part.

***Claim Rejections - 35 USC § 103***

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

7. Claims 12, 13, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Whiting (US 2002/0173758) in view of Hoover (US 6,520,334) and further in view of Martin (4,631,061).

8. For Claim 12, Whiting '758 shows an apparatus for draining a urine collection bag worn by a person (Fig. A, Abstract, and paragraph 23). The apparatus includes an electrically operated drain valve coupled to a drain tube of the urine collection bag (pinch valve 9 coupled to flexible tube 10 of urine drain bag 8, Fig. A and paragraphs 21-22). A control device remotely controls the drain valve (remote control transmitter device 1, Figs. A and B and paragraphs 16 and 21-22). The control device is adapted to be worn by the person (paragraphs 8 and 22). The control device includes a drain valve actuation control (switches 18 and 19, paragraphs 21-22). Whiting teaches a housing for the control device for securing the apparatus to a user (wearable pouch, paragraph 22, lines 25-29). The apparatus of Whiting resembles a pager (Fig. B; note that pagers can take a large variety of forms and can be incorporated into other electronic devices). Whiting teaches a battery disposed within the housing for providing electrical power to operate the drain valve (paragraphs 21-22). Whiting teaches that the apparatus is portable and compact so as to be worn by the user (paragraph 8). Whiting

Art Unit: 3761

teaches that the apparatus may be mounted in any suitable location to be worn in a discreet manner (paragraph 14). Whiting does not teach the housing including a clip for securing the housing to a belt or waistband, or a simulated display window. Whiting also does not teach a flexible wire cable. However, it is well known in the art of controlling devices remotely to connect the signaling unit and the device to be controlled using a flexible wire cable. Clips for securing wearable items to a belt or waistband are well known in the container art; simulated display windows are also well known in the container art. Hoover teaches a housing which includes a clip suitable for securing the housing to a belt or a waistband (securing means 42, Figs. 2, 4, and 5, and col. 4, line 65 to col. 5, line 8). Hoover teaches the clip serving to attach the housing to the clothing to reduce the chance of its being lost (col. 4, lines 65-68). Hoover also teaches the housing including a simulated display window (display 46, Figs. 1, 2, 4, and 5, and col. 5, lines 8-24). Hoover teaches that the housing is a storage container for storing items that may cause embarrassment if observed by other people (col. 3, lines 13-19). Martin teaches a wearable urine collection device with its controls connected by a cable to a backpack (see paired conductors 25, Figs. 1 and 7 and col. 3, lines 42-61). Martin indicates that the system is compact, inconspicuous, and comfortable to wear for urinary incontinent people (col. 4, lines 59-68). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Whiting to include the housing having a clip and a simulated display window, as taught by Hoover, to attach the apparatus to clothing and avoid loss of the apparatus, and to avoid embarrassment, as taught by Hoover. It would also have been obvious to one of ordinary skill in the art

Art Unit: 3761

to modify the apparatus of Whiting to use a flexible flat wire cable to connect up the control device, as taught by Martin, to provide an inconspicuous and comfortable system for urinary incontinent people.

9. For Claim 13, Whiting '758 teaches the drain valve being secured to the leg of a person (paragraph 23). Whiting is silent as to the drain valve being secured to the ankle of the leg. However, attachment to the ankle is not a structural limitation of the apparatus. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (Bd. Pat. App. & Inter. 1987). The apparatus of Whiting is capable of attachment to the ankle.

10. For Claim 15, Whiting '758 teaches the drain valve actuation control including a push-button switch (Figs. A and B and paragraphs 21-22).

11. Claims 4, 6, and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Whiting (US 2002/0173758) in view of Hoover (US 6,520,334) and further in view of Martin (4,631,061) and Carroll (5,555,490).

12. For Claim 4, Whiting '758 shows an apparatus for draining a urine collection bag worn by a person (Fig. A, Abstract, and paragraph 23). The apparatus includes an electrically operated drain valve coupled to a drain tube of the urine collection bag (pinch valve 9 coupled to flexible tube 10 of urine drain bag 8, Fig. A and paragraphs 21-22). A control device remotely controls the drain valve (remote control transmitter

Art Unit: 3761

device 1, Figs. A and B and paragraphs 16 and 21-22). The control device is adapted to be worn by the person (paragraphs 8 and 22). The control device includes a drain valve actuation control (switches 18 and 19, paragraphs 21-22). Whiting teaches a housing for the control device for securing the apparatus to a user (wearable pouch, paragraph 22, lines 25-29). The apparatus of Whiting resembles a pager (Fig. B; note that pagers can take a large variety of forms and can be incorporated into other electronic devices). Whiting teaches a battery disposed within the housing for providing electrical power to operate the drain valve (paragraphs 21-22). Whiting teaches that the apparatus is portable and compact so as to be worn by the user (paragraph 8). Whiting teaches that the apparatus may be mounted in any suitable location to be worn in a discreet manner (paragraph 14). Whiting does not teach the housing including a clip for securing the housing to a belt or waistband, or a simulated display window. Whiting also does not teach a flexible flat wire cable. However, it is well known in the art of controlling devices remotely to connect the signaling unit and the device to be controlled using a flexible flat wire cable. Clips for securing wearable items to a belt or waistband are well known in the container art; simulated display windows are also well known in the container art. Hoover teaches a housing which includes a clip suitable for securing the housing to a belt or a waistband (securing means 42, Figs. 2, 4, and 5, and col. 4, line 65 to col. 5, line 8). Hoover teaches the clip serving to attach the housing to the clothing to reduce the chance of its being lost (col. 4, lines 65-68). Hoover also teaches the housing including a simulated display window (display 46, Figs. 1, 2, 4, and 5, and col. 5, lines 8-24). Hoover teaches that the housing is a storage container for storing



Art Unit: 3761

items that may cause embarrassment if observed by other people (col. 3, lines 13-19).

Martin teaches a wearable urine collection device with its controls connected by a cable to a backpack (see paired conductors 25, Figs. 1 and 7 and col. 3, lines 42-61). Martin indicates that the system is compact, inconspicuous, and comfortable to wear for urinary incontinent people (col. 4, lines 59-68). Carroll teaches the use of flexible flat wire cable to connect wearable electronic components (Fig. 15 and Abstract). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Whiting to include the housing having a clip and a simulated display window, as taught by Hoover, to attach the apparatus to clothing and avoid loss of the apparatus, and to avoid embarrassment, as taught by Hoover. It would also have been obvious to one of ordinary skill in the art to modify the apparatus of Whiting to use a flexible flat wire cable to connect up the control device, as taught by Martin and Carroll, to provide an inconspicuous and comfortable system for urinary incontinent people.

13. For Claim 6, Whiting '758 teaches the drain valve being secured to the leg of a person (paragraph 23). Whiting is silent as to the drain valve being secured to the ankle of the leg. However, attachment to the ankle is not a structural limitation of the apparatus. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (Bd. Pat. App. & Inter. 1987). The apparatus of Whiting is capable of attachment to the ankle.

Art Unit: 3761

14. For Claim 8, Whiting '758 teaches the drain valve actuation control including a push-button switch (Figs. A and B and paragraphs 21-22).

***Allowable Subject Matter***

15. Claims 7 and 14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims, and to overcome the rejection under 35 U.S.C. 101.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paula L. Craig whose telephone number is (571) 272-5964. The examiner can normally be reached on 8:30AM-4:00PM M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

**TATYANA ZALUKAEVA**  
**SUPERVISORY PRIMARY EXAMINER**



Art Unit: 3761

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Paula L Craig  
Examiner  
Art Unit 3761

PLC